SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. [redacted]130

KEOKUK AND HAMILTON BRIDGE COMPANY,
APPELLANT,

v.

FRED SALM, JR., ELMER F. DENNIS, WILLIAM E. MILLER, ET AL., APPELLEES.

REPLY BRIEF OF APPELLEES ON MOTION TO DISMISS.

LEE SEIBENBORN,
State's Attorney,
EARL W. WOOD,
Solicitors for Appellees.

(27,869)

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v.

FRED SALM, Jr., ELMER F. DENNIS, WILLIAM E. MILLER, ET AL., APPELLEES.

BRIEF OF APPELLEES.

Statement.

Appellant served upon appellees a motion to advance and submit under rule 32, and asserted in this motion that the only question decided by the lower court was one of jurisdiction. After the service of this motion on appellees a motion to dismiss this appeal for want of jurisdiction in this court was filed by appellees, basing said motion on the fact that the lower court only decided a question of equitable jurisdiction and did not decide a question of its jurisdiction as a

Federal court, and that no proper certificate was filed. The motion of appellant to advance and submit is included in the brief of appellees with motion to dismiss this appeal.

Appellant reverses itself from the position taken in its motion to advance and submit, and now says that its right to appeal directly to this court is based not upon a jurisdictional question, but upon the alleged fact that this is a case that involves the construction or application of the Constitution of the United States. An examination of the record shows that this is not a case involving the construction or application of the Constitution of the United States within the meaning of section 238 of the Judicial Code.

Points and Authorities.

Appellant in its bill claims that the local assessor, the county collector, and the members of the Board of Review of Hancock County, Illinois, have assessed its property on a basis of about 150 per cent (150%) valuation, whereas they have arbitrarily, intentionally, and systematically assessed the property of individuals and corporations at a total taxable value of 40 per cent (40%) of its fair cash value; that by so doing defendants violate the Fourteenth Amendment to the Federal Constitution, in that they are seeking to take its property without due process of law, and are denying it the equal protection of the laws (Printed Record, page 3).

This assertion in the bill is the sole basis of appellant's claim that this case involves the construction and application of the Constitution of the United States. We deny that this assertion in the bill raises the question of constitutional construction or application. The mere fact that property is assessed at different values does not raise this question, and

that is all that the bill avers. In order to raise this question the bill must aver facts showing—

1. That appellant was denied a hearing or not given notice;

2. That the remedies provided by the statutes of the State for review of the assessment before the tax is made final and before appellant's property can be taken have been sought by appellant;

3. That the State, as distinguished from individuals, is violating appellant's rights under the Constitution.

These necessary averments do not appear in the bill.

Appellant in its bill does not show wherein the Fourteenth Amendment to the United States Constitution has been violated. It does not aver or show that it was denied a hearing, or was not given notice, and thus does not show that its property was taken without due process of law. Appellant objects to an assessment of taxes made by the assessors, and the statute of the State provides for a review of the assessment at the option of the person taxed by complaint made to the county collector, the board of review, and the county court. Appellant is thus given three means of having his tax assessment corrected and equalized before his tax is finally fixed and before his property can be taken to pay the tax. Appellant does not aver or show that it sought any of these remedies for review of the assessment provided by the State, and therefore it does not appear that it was denied the equal protection of the law.

Chapter 120, sections 319-320, 329, and 191, Hurd's Revised Statutes of Illinois, 1919.

If a taxpayer be given an opportunity to test the validity of the taxes at any time before it is made final, whether the

proceeding for review takes place before a board having a quasi-judicial character or before a tribunal provided by the State for the purpose of determining such questions, due process is not denied. The bill must show that the remedy provided by the State was sought.

Hodges *v.* Muscatine County, 196 U. S., 261.
Pittsburg, etc., R. Co. *v.* Board of Public Works, 172 U. S., 47.

In matters of taxation it is sufficient that the party assessed should have an opportunity to be heard, either before a judicial tribunal or before a board of assessment, at some stage of the proceeding.

Winona, etc., Land Co. *v.* Minnesota, 159 U. S., 537.
Wurts *v.* Hoagland, 114 U. S., 614.
Weyerhauser *v.* Minnesota, 176 U. S., 554.
Security Trust, etc., Co. *v.* Lexington, 203 U. S., 323.
Palmer *v.* McMahon, 133 U. S., 669.

The statute of the State of Illinois provides that after the assessor has assessed property—

> "On complaint in writing that any property described in such complaint is incorrectly assessed, the board (of review) shall review the assessment, and correct the same, as shall appear to be just."

There is no averment in the bill that complainant has sought or exhausted this remedy, and it therefore does not show that the Fourteenth Amendment to the Constitution of the United States has been violated.

Chapter 120, section 329, Hurd's Revised Statutes, 1917.

The statute of the State of Illinois provides for a review of assessments before the county supervisor of assessments and county assessor as follows:

> "The office of the board of assessors, the county supervisor of assessments, and the county assessor shall be open all the year during business hours to hear or receive complaints or suggestions that real property has not been assessed at proper valuation." * * *
>
> "The supervisor of assessments shall assess, make such changes or alterations in the assessment of property as though originally made, and in making such changes in valuation as returned by the township assessor such changes shall be noted in a column provided therefor, and no change shall be made in the original figures." * * *.
>
> Chapter 120, sections 319-320, Hurd's Revised Statutes of Illinois, 1919.

The statute of the State of Illinois with reference to appellant's bridge provides:

> "That all bridge structures across any navigable streams forming the boundary line between the State of Illinois and any other State shall be assessed by the township or other assessor in the county or township where the same is located, as real estate; and all provisions of law relating to the assessment and taxation of real estate shall apply to the assessment and taxation of such bridges." * * *
>
> Chapter 120, section 354, Hurd's Revised Statutes of Illinois, 1919.

The statute of Illinois with reference to delinquent taxes provides that in the county court—

> "The court shall examine said lists, and if defense (specifying in writing the particular cause of objection) be offered by any person interested in any of said land or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be."

There is no averment in the bill that this remedy was sought or exhausted, and it therefore does not show that the Fourteenth Amendment to the Constitution of the United States has been violated.

> Chapter 120, section 191, Hurd's Revised Statutes, 1919.

The presumption is that a tax is assessed properly, and to overcome this presumption the bill must show that the objection to the assessment has not been waived through the neglect or choice of the complainant in not appearing before the board of review and in not filing its objection in the county court.

> Merchants & M. National Bank *v.* Pa., 167 U. S., 461.
> Chicago & Northwestern R. Co. *v.* People, 174 Ill., 80.
> Cleveland, C., C. & St. L. R. Co. *v.* People, 212 Ill., 351.
> Spencer & Gardiner *v.* People, 68 Ill., 510.
> Humphrey *et al. v.* Nelson, 115 Ill., 51.
> People *v.* Lots in Ashley, 122 Ill., 298.

An allegation in a bill in equity that the cause of action was one arising under the Constitution and laws of the

United States does not suffice, since it is well settled that a mere formal statement to that effect is not enough.

239 U. S., 144; 36 S. Ct., 97; 60 U. S. (L. Ed.), 186.

The bill must aver sufficient facts to show, not as a matter of mere inference or argument, but clearly and distinctly, that the suit involves a construction or application of the Federal Constitution.

Muse *v.* Arlington Hotel Co., 168 U. S., 430; 18 S. Ct., 109; 42 U. S. (L. Ed.), 531.

Hull *v.* Barr, 234 U. S., 712; 34 S. Ct., 892; 58 U. S. (L. Ed.), 155.

Sagaman *v.* U. S., 249 U. S., 182; 39 S. Ct., 191; 63 U. S. (L. Ed.).

Cosmopolitan Min. Co. *v.* Walsh, 193 U. S., 460; 24 S. Ct., 489; 48 U. S. (L. Ed.), 749.

See also—

Keokuk & Hamilton Bridge Co. *v.* People, 173 U. S., 702; 175 U. S., 632.

The act of the local assessor in making the assessment when no remedy is sought through the board of review or the county court is not the act of the State, within the meaning of the Fourteenth Amendment to the Federal Constitution. For this reason the bill must aver that these remedies have been sought before a Federal question can be said to have been raised by the bill. This was not done in the case at bar.

Raymond and Green Cases Distinguished.

Appellant relies upon Raymond *v.* Chicago Union Traction Company, 207 U. S., 20, and Green *v.* Louisville & I. R. Co., 244 U. S., 499. These cases are not in point. In both of these cases sufficient facts are averred to show that appellant was denied a hearing and not given notice. No such averments appear in appellant's bill in the case at bar. In both of these cases the State by statute had not provided a method of review of the tax objected to before it was made final, as it has done in the case at bar.

In the Raymond case the Supreme Court of the State by mandamus compelled the board of equalization to assess the tax to which objection is made. The State provided no means of review of this assessment. Objectors were not made parties to the mandamus proceeding or given notice.

In the Green case complaint is made to the assessment of the State board of valuation. The State provided no means of review of its assessment. Objectors were denied a hearing and the benefit of equalization.

Respectfully submitted,

LEE SEIBENBORN,
State's Attorney,
EARL W. WOOD,
Solicitors for Appellees.

A copy of the above reply brief received and service of same acknowledged this 17th day of February, 1921.

F. T. HUGHES,
Solicitor for Appellant.